IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1317 OF 2006

Shri Aasaram Gopal Kayastha and another. ... Petitioners.

V/s.

Shri Subhash Damodar Kardile and othesr. ... Respondents.

P.N.Joshi for the petitioners.

CORAM : V.C.DAGA, J.

DATED: 16th March 2006.

P.C. :

Heard learned counsel for rival parties.

This petition is directed against the order dated 30th December, 2005, whereby the appellate authority- Deputy Director, Land Record, Nasik Region, Nasik has disposed of appeal without considering the challenges to the order of condonation of delay, which was challenged at the instance of the petitioner, who was appellant before respondent No.3.

It is no doubt true that it was expected on the part of respondent No.3 to dispose of the appeal and to consider whether or not the order of

condonation of delay was proper. However, without adjudicating on the said issue the appeal appears to have been disposed of without any specific order in that behalf.

Be that as it may, it is needless to mention that there is no adjudication of the challenge to the order of condonation of delay at the hands of the appellate authority. In view of the law laid down by this Court in the case of ***Shah Babulal Khimji v. Jayaben D. Kenia***, AIR 1981 SC 1786 (para-107, 109), it would be open for the petitioners to challenge the said order if, ultimately, the petitioners suffer adverse order and are required to challenge the same before higher forum. All contentions are kept open.

With this clarification, petition stands disposed of with no order as to costs.

(V.C.DAGA, J.)